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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

U.S. ELECTION COMMISSION
SECRETARIAT

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5578
DATE COMPLAINT FILED: October 21, 2004
DATE OF NOTIFICATION: October 28, 2004
LAST RESPONSE RECEIVED: November 22, 2004
DATE ACTIVATED: September 12, 2005
EXPIRATION OF SOL: October 19, 2009

COMPLAINANTS:

National Republican Congressional Committee

RESPONDENTS:

Patty Wetterling for Congress and Al W. Patton, in
his official capacity as Treasurer
Patty Wetterling
STF Productions, Inc.

RELEVANT STATUTES:

2 U.S.C. § 441b(a)
2 U.S.C. § 441i(e)

INTERNAL REPORTS CHECKED:

Disclosure reports; Commission indices

FEDERAL AGENCIES CHECKED:

U.S. Patent and Trademark Office

I. INTRODUCTION

This matter concerns allegations that Patty Wetterling, Patty Wetterling for Congress ("Committee"), Al W. Patton, in his official capacity as Treasurer, and STF Productions, Inc. ("STF"), have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). The complaint alleges that STF made, and the Committee knowingly received prohibited corporate contributions in violation of 2 U.S.C. §§ 441b(a) by including a corporate trademark owned by STF for the television program, "America's Most Wanted," in television advertisements funded by the Committee. In addition, the complaint alleges that Patty

1 Wetterling and the Committee violated 2 U.S.C. § 441i(e) because she and the Committee
2 received prohibited corporate contributions. Respondents deny that they have violated the Act.

3 There is no information establishing that the advertisement used the corporate trademark
4 for America's Most Wanted. In addition, the Commission in prior advisory opinions approved
5 the use of endorsers who are identified by their corporate positions, so long as the campaign pays
6 for all advertising expenses and the endorsement is given in an individual capacity. Accordingly,
7 this Office recommends that the Commission find no reason to believe that Patty Wetterling for
8 Congress and Al W. Patton, in his official capacity as Treasurer or STF Productions, Inc.
9 violated 2 U.S.C. § 441b(a) by making a prohibited corporate contribution. This Office further
10 recommends that the Commission find no reason to believe that Patty Wetterling, Patty
11 Wetterling for Congress and Al W. Patton, in his official capacity as Treasurer, knowingly
12 received, or solicited, received, directed, transferred or spent a corporate contribution in violation
13 of 2 U.S.C. § 441i(e).

14 **II. FACTS**

15 In 2004, Patty Wetterling ran for the office of U.S. Representative from the Sixth
16 Congressional District of Minnesota. Wetterling ultimately lost to incumbent Mark Kennedy in
17 the general election. *See Rachel E. Stassen-Berger, Wetterling Joins Senate Race, PIONEER*
18 *PRESS*, Oct. 10, 2005.

19 Beginning on October 19, 2004, the Committee aired an advertisement featuring an
20 endorsement by John Walsh, the host of "America's Most Wanted." The complaint alleges that
21 the advertisement used the corporate trademark for "America's Most Wanted," resulting in a
22 prohibited corporate contribution.

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1 "America's Most Wanted" is a television program focused on capturing criminal
2 fugitives by using audience participation. STF, a subsidiary of Fox, owns the trademark for
3 "America's Most Wanted." The trademark includes a logo design and associated text. *See*
4 Compl., Ex.2; STF Response, Attachment A. The logo consists of an eagle surrounded by stars,
5 with boxed text across the eagle, "AMERICA'S MOST WANTED," and underlined text below
6 the eagle, "AMERICA FIGHTS BACK." *See id.* STF also has a protected word mark which
7 states, "AMERICA'S MOST WANTED AMERICA FIGHTS BACK." *See id.* John Walsh, the
8 host of "America's Most Wanted," is not an employee of STF. STF Response at 2.

9 According to STF's response, Walsh and Wetterling have been personal friends for
10 nearly 15 years due to their common background in child and victim advocacy. In October 2004,
11 Committee staff contacted Walsh about endorsing Wetterling's candidacy. The response
12 contends that Walsh agreed to endorse Wetterling "as a personal friend" and "volunteered" his
13 time for taping the endorsement. STF Response at 3.

14 STF further indicates that Mr. Walsh did not seek and STF did not provide pre-approval
15 of the use of the show's name in the advertisement. According to STF, once it learned of the
16 identification of the show in advertisements, STF immediately contacted the company used by
17 the Committee to produce the advertisement, LHS Media.¹ LHS Media subsequently removed
18 the identifying statement, but it appears that at least some of the advertisements that aired
19 referred to Mr. Walsh as host of "America's Most Wanted."

20 The Commission received a copy of the advertisement in question when the complaint
21 was submitted. The content of the advertisement is as follows:

22

¹ STF's response states that LHS Media is not affiliated with STF.

<u>VISUAL</u>	<u>AUDIO</u>
Image of Walsh standing in front of a police car, with two police officers in the background and caption, "John Walsh, Host, AMERICA'S MOST WANTED."	Walsh: I'm a Republican, and I am outraged at the false attacks on my friend Patty Wetterling.
Image of Wetterling at table talking in front of adult group.	Walsh: I've never met anyone more qualified or better prepared to serve in Congress.
Image of Wetterling at table with children with caption, "Patty Wetterling, Integrity, Commitment."	Walsh: Patty Wetterling's integrity and commitment are truly inspiring.
Return to image of Walsh standing in front of a police car, with two police officers in the background with caption, "'Kennedy's ads contain errors and . . . distortions' – St. Cloud Times, 10/15/04" and Committee logo.	Walsh: Her opponent and his allies know that. They're desperate to defeat her in any way they can. I know her priorities are in order. Please vote for Patty Wetterling for Congress on November 2nd.
Image of Wetterling with captions, "Endorsed by Minnesota Police Pioneer Press," "Approved by Patty Wetterling," "Paid for by Wetterling for Congress," and Committee logo.	Wetterling: I'm Patty Wetterling and I approved this message.

"America's Most Wanted," which currently airs on Fox, begins with the show's theme song and features the show's trademarked logo in the first few seconds. For example, in an episode which aired in October 2005, Walsh appeared after the show's standard introduction and stood in the middle of a busy Miami street. *America's Most Wanted* (Fox Broad. Co., Oct. 1, 2005). Unlike the advertisement at issue, the screen displayed no identifying text and no police car with two police officers standing behind Walsh. *Id.* The show included short segments featuring a particular fugitive and reenactments of crimes, plus interviews with victims, witnesses, and law enforcement officials. *Id.* After each segment, viewers were asked to call the show's hotline telephone number. *Id.*

II. ANALYSIS

The complaint asserts that "America's Most Wanted" is a corporate asset and the name is a protected trademark owned by STF. Based on this assertion, the complaint further alleges that

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1 by using the name in the commercial and by "mimic[king] the tone and feel of the show for
2 almost the complete 30 second ad," the Committee improperly benefited from the value of the
3 show's trademarked name and goodwill and that this amounted to a prohibited corporate
4 contribution. Complaint at 2.

5 The Act prohibits corporations from making expenditures and contributions in connection
6 with federal elections. 2 U.S.C. § 441b(a). The Act also prohibits candidates from "knowingly"
7 accepting or receiving any corporate contribution. *Id.* This section broadly defines
8 "contribution" as, *inter alia*, "anything of value." 2 U.S.C. § 441b(b)(2); *see also* 2 U.S.C. §
9 431(8)(A)(i). A corporate trademark could be "something of value that the corporation was
10 providing to the campaign," and use of a corporate trademark in a campaign advertisement may
11 constitute a violation of § 441b(a). *See, e.g.*, MUR 4340 (TWEETZERMAN).

12 Respondents argue that the reference to "America's Most Wanted" does not constitute a
13 prohibited corporate contribution and was used simply to identify Walsh to the audience. STF
14 Response at 4-5; Wetterling Response at 2. According to respondents, Walsh endorsed
15 Wetterling in an individual capacity and volunteered his services for the commercial. STF
16 Response at 3-4; Wetterling Response at 2. Neither STF, Fox, nor any affiliated company
17 endorsed Ms. Wetterling. STF Response at 4; Wetterling Response at 2. The Committee
18 specifically notes that it paid for all expenses associated with the advertisement. Wetterling
19 Response at 2. With respect to the allegation that the presence of police officers in the
20 commercial was to mimic the tone and feel of the show, STF claims that the officers highlighted
21 Wetterling's strong relationship with and endorsement from the law enforcement community.
22 STF Response at 5-6.

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1 Here, STF does not appear to have given "anything of value" to the Committee. The
2 advertisement does not display the actual trademarked logo or include the full word mark. The
3 text that appears below Walsh at the start of the advertisement simply identifies Walsh but does
4 not resemble the trademark. Moreover, in comparison to an actual episode of "America's Most
5 Wanted," the Wetterling advertisement does not mimic the tone and feel of the show. The theme
6 song of "America's Most Wanted" does not play in the campaign advertisement nor does the
7 logo appear. No other characteristic features of the show appear in the advertisement.
8 Furthermore, it does not appear that STF even had prior knowledge that the name of the show
9 would appear in the advertisement given that STF immediately contacted LHS Media once the
10 advertisement aired and reference to the show was removed.

11 In advisory opinions, the Commission has previously concluded that the use of endorsers
12 who are identified by their corporate positions in campaign-funded advertisements would not
13 violate 2 U.S.C. 441b provided that the corporate employee volunteers his or her time and the
14 campaign pays for all advertisement expenses. *See* AO 1978-77 (Aspin) (permitting corporate
15 employee to provide volunteer services for campaign radio commercial in which no corporate or
16 personal funds were used); AO 1984-43 (Brunswick Corporation) (permitting corporate
17 employee to appear in campaign television commercial which discussed candidate's support for
18 industry and was wholly paid for by campaign).²

19 Available information does not suggest that the Committee improperly benefited from a
20 corporate asset. Like the campaigns in AO 1978-77 and 1984-43, the Committee paid for all

² In 1992, the Commission proposed a rule regulating the use of corporate or labor organization logos, trademarks and letterhead but failed to reach a majority decision. *See* 60 Fed. Reg. 64260, 64268-269 (Dec. 14, 1995). Thus, it appears AO 1978-77 and 1984-43 provide the most direct guidance on the use of corporate names, logos, or personalities in campaign advertisements.

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1 expenses associated with the advertisement at issue. Further, the advertisement does not state or
2 suggest that STF endorsed Wetterling. As discussed *supra* page 5, the advertisement does not
3 display STF's trademark or full word mark or mimic the tone and feel of the show. The
4 reference to "America's Most Wanted" seems intended simply to identify John Walsh to the
5 audience as the host of the show. The lack of a corporate endorsement and the appearance of a
6 personal message contained in the advertisement (e.g., "my friend," "I've never") suggest that
7 Walsh appeared in his individual capacity. Indeed, according to respondents, Walsh and the
8 candidate are long-time friends, and STF initially did not know that the advertisement would
9 identify Walsh as host of the show.

10 Finally, the complaint claims that Wetterling and the Committee violated § 441i(e) by
11 illegally receiving a corporate contribution when it used "America's Most Wanted" trademarked
12 name in the advertisement. Under the Act, a federal candidate or "an entity directly or indirectly
13 established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or
14 individuals holding Federal Office shall not . . . solicit, receive, direct, transfer, or spend funds in
15 connection with an election for Federal office, including funds for any federal election activity,
16 unless the funds are subject to the limitations, prohibitions, and reporting requirements of this
17 Act." 2 U.S.C. § 441i(e)(1)(A). However, as discussed above, because (1) the Committee never
18 used the trademarked logo, (2) the Committee paid for all advertising expenses, (3) the
19 advertisement did not include or suggest a corporate endorsement, and (4) Walsh appeared in his
20 individual capacity, there was no corporate contribution by STF. Thus, Wetterling and the
21 Committee did not receive a corporate contribution in contravention of § 441i(e). The complaint
22 provides no other basis for concluding that Wetterling and the Committee may have solicited,
23 directed, transferred, or spent corporate funds.

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For the foregoing reasons, we recommend that the Commission find there is no reason to believe that Patty Wetterling for Congress and Al W. Patton, in his official capacity as Treasurer, or STF Productions, Inc. violated 2 U.S.C. § 441b(a). For similar reasons, we recommend that the Commission find there is no reason to believe that Patty Wetterling, Patty Wetterling for Congress, and Al W. Patton, in his official capacity as Treasurer, violated 2 U.S.C. § 441i(e).

V. RECOMMENDATIONS

1. Find no reason to believe that Wetterling for Congress and Al W. Patton, in his official capacity as Treasurer, violated 2 U.S.C. § 441b(a).
2. Find no reason to believe that STF Productions, Inc. violated 2 U.S.C. § 441b(a).
3. Find no reason to believe that Patty Wetterling, Wetterling for Congress, and Al W. Patton, in his official capacity as Treasurer, violated 2 U.S.C. § 441i(e).
4. Approve the appropriate letters.
5. Close the file.

Lawrence H. Norton
Counsel

Lawrence L. Calvert, Jr.
Deputy Associate General Counsel

2/15/06
Date

By:


Ann Marie Terzaken
Assistant General Counsel


Jin Lee
Attorney

[REDACTED]

Certifications

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Patty Wetterling for Congress and Al W.) MUR 5578
Patton, in his official capacity as)
Treasurer; Patty Wetterling; STF)
Productions, Inc.)

CERTIFICATION

I, Mary W. Dove, Secretary of the Federal Election Commission, do hereby
certify that on February 22, 2006, the Commission decided by a vote of 6-0 to the
following actions in MUR 5578:

1. Find no reason to believe that Wetterling for Congress and Al W. Patton, in his official capacity as Treasurer, violated 2 U.S.C. § 441b(a).
2. Find no reason to believe that STF Productions, Inc. violated 2 U.S.C. § 441b(a).
3. Find no reason to believe that Patty Wetterling, Wetterling for Congress, and Al W. Patton, in his official capacity as Treasurer, violated 2 U.S.C. § 441i(e).
4. Approve the appropriate letters, as recommended in the First General Counsel's Report dated February 15, 2006.
5. Close the file.

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Federal Election Commission
Certification on MUR 5578
February 22, 2006

Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and
Weintraub voted affirmatively for the decision.

Attest:

February 22, 2006
Date

Mary W. Dove
Mary W. Dove
Secretary of the Commission

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